IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14043 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAYURBHAI HARSHADBHAI RATHOD & ORS
Versus
STATE OF GUJARAT

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Appearance :
MR PS CHAMPANERI for Applicants
MR KC SHAH APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
Date : 27/12/2005

ORAL JUDGMENT

1 RULE. Waived by learned APP Mr. K.C.Shah for the respondent State.

2 During trial in Sessions Case No. 40 of 2003, which is proceeded against the present petitioners - accused, an application came to be filed before the learned Trial Judge by the prosecution stating that the petitioner No.1 herein after death of his first wife, married again to one Hinaben Mayurbhai Rathod, and behaviour of accused No.1 to his second wife Hinaben not being proper, and that fact being relevant to the fact in issue in trial, according to the prosecution, it was necessary to call second wife of accused No.1 Hinaben and parents in-law as witnesses of prosecution. The said application came to be allowed by learned Trial Judge on the ground that at times subsequent conduct of the accused during trial may be important and to ascertain that cruelty was executed to first wife, the fact that how the accused No.1 treats his second wife was relevant, and hence the said application came to be allowed and, therefore, this Misc. Criminal Application under Section 482 of the Cr.P.C. to quash the order passed by the Presiding Officer,

Second Fast Track Court, Valsad, on 16th of November, 2005. It is very important to note here that the accused i.e. present petitioners are facing the trial for the offences punishable under Sections 306 and 498-A.

3 Having heard learned counsels for the parties and going through the order passed by the Trial Court, it becomes very clear that subsequent conduct of the accused, more so to the extent to find out that how accused No.1 treated his second wife, to substantiate the charge of having executed cruelty to his first wife, cannot be a relevant fact to fact in issue, and attempt of the prosecution to bring such evidence on record, ought to have been refused by learned Presiding Officer on the simple ground that the said evidence was not at all relevant to the fact in issue. Nothing further is required to be observed in this respect. In all fairness of the trial and having regard to the established law, the alleged conduct of the accused as described in Application Exh. 53 cannot be said to be relevant to

the trial both ways either to favour the accused or in favour of the prosecution. Meaning thereby, even the accused cannot be permitted to lead evidence to show his good conduct towards his second wife to establish a fact that he did not execute cruelty to first wife. Like wise, prosecution also cannot be permitted to lead evidence to ascertain the conduct of the accused during trial towards his second wife.

4 With reference to the controversy at hand, when we look to Section 8 of the Indian Evidence Act, 1872, a provision is found that motive, preparation and previous or subsequent conduct of any person including accused is a relevant fact. It must not be escaped from the consideration that the conduct which is envisaged by Section-8 is conduct directly and immediately influences or is influenced by any fact in issue or relevant to the fact in issue, and such conduct only can be proved under Section-8. May such conduct be of the accused. It must also be borne in mind that a criminal trial is not an inquiry into the conduct of an accused for any purpose other than to

determine whether he is guilty of the offence charged. Therefore that piece of conduct can be held to be inculpatory and relevant fact to fact in issue which is envisaged by Section-8 of the Evidence Act. Previous conduct of the accused of committing crime and subsequent conduct directly or indirectly influenced or influencing the offence may be relevant to fact in issue, but his general character as has been sought to be made relevant, cannot be said to be relevant to the facts in issue. This is more clear by provisions of Sections 52 to 55 of the Indian Evidence Act where character or a conduct of the accused becomes relevant. Anyhow, as observed by the learned Trial Judge, the conduct of the accused during trial may be important but inadmissible in evidence with reference to the allegation for which he is charged. In this view of matter, the behaviour and the conduct of the accused with his second wife is not relevant to the fact in issue because fact in issue is whether the accused committed offence under Section 306 and 498-A in respect of first wife of accused No.1.

5 In the result, this Application is allowed. Rule made absolute to the above extent. The application preferred by the prosecution at Exh. 53 in Sessions Case No. 40 of 2003 stands dismissed. DS permitted.

(J.R.VORA, J.)

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